

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CLERK'S OFFICE
Atlanta

RENARD NELSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO.

1:06-CV-2564-JEC

CRIMINAL NUMBER.

1:92-CR-125-02-JEC

CC 25 2006

1/3/06
Clerk
Deputy Clerk

ORDER

Defendant Renard Nelson has filed a Motion to Relieve Defendant from the One-Point USSG § 4A1.2 Enhancement in Light of *Shepard v. United States* [187]. This present motion represents defendant's most recent effort to reduce a very lengthy sentence that was imposed on him as a result of his December 2, 1992 conviction for various drug charges and a firearms charge. The docket indicates that the defendant fled prior to his sentencing on the above conviction [125, 126], but was ultimately apprehended and sentenced, on June 1, 1994, by the Honorable Robert H. Hall, to a 262 month sentence on the drug counts and a 60 month consecutive sentence on what appears¹ to be a firearms count (Docket Entry for June 1, 1994).

Following an unsuccessful appeal and other procedural events,

¹ This case is so old that many of the docket entries predate implementation of the CM/ECF electronic filing system. Thus, they cannot be retrieved by access to that system.

the defendant filed his first § 2255 motion. (See Order of July 26, 2000[160], denying defendant's § 2255 Motion [hereinafter "§ 2255 Order."] at 3.)² This Court was assigned this case following the death of Judge Hall. This Court denied defendant's § 2255 motion, in a thirty-five page Order. One of defendant's arguments, rejected by the Court, was that Judge Hall had erred in applying a one-point enhancement of the defendant's criminal history score, as a result of a state conviction that had been expunged pursuant to Georgia's first offender law. (*Id.* at 19-24.) Defendant attempted to appeal this denial of his § 2255 motion, but the Eleventh Circuit ultimately dismissed the appeal, because defendant had failed to pay the filing fee and had not been granted a certificate of appealability [174].

Thereafter, the defendant filed another pleading titled motion for new trial [171] (attached). The Court denied this motion on November 7, 2003 (Order of November 7, 2003 [186] [hereinafter "New Trial" Order]). The Order denying the motion indicated that the defendant was attempting, in part, to challenge some aspect of his sentence, by relying on the Supreme Court's then new *Apprendi* decision. (*Id.* at 2-4.) The Court rejected this effort, noting, in part, that defendant's present motion for new trial was really another motion for § 2255 relief and, as a second § 2255 motion, the

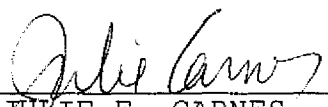
² The Court has attached a copy of this July 26, 2000 Order, as it was issued before implementation of the CM/ECF system.

defendant was required to obtain the consent of the Eleventh Circuit before filing a successive § 2255 petition. (*Id.* at 3.)

Now before this Court is defendant's present Rule 60(b)(5) Motion to Relieve Petitioner of 1-Point 4A.2 Enhancement [187]. Again, the defendant attempts to have the Court undo the one-point enhancement that Judge Hall imposed as a result of defendant's conviction under the Georgia first offender law. Just as this Court previously denied defendant's motion for new trial, concluding, in part, that the motion was just a disguised § 2255 motion that could not be filed without permission of the Eleventh Circuit, the Court likewise concludes that the present Rule 60(b) motion is, in effect, defendant's third § 2255 motion. Again, the defendant must obtain the permission of the Eleventh Circuit to file this motion. Moreover, as the Government notes, the defendant's reliance on *Shepard v. United States*, 125 S.Ct. 1254 (2005) is inapt and offers no support for defendant's argument. Thus, on the merits, the defendant's motion fails.

Accordingly, the Court **DENIES** defendant's Rule 60(b)(5) Motion to Relieve Petitioner of 1 Point § 4a1.2 Enhancement, in Light of *Shepard v. United States*, 125 S.Ct. 1254 (2005).

SO ORDERED, this 24 day of October, 2006.



JULIE E. CARNES
UNITED STATES DISTRICT JUDGE